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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Assessment and Collection) MD Docket No. 96-84
of Regulatory Fees for)
Fiscal Year 1996)

To: The Commission

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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Date: April 29, 1996

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I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-captioned proceeding.^{1/}

In the NPRM, the Commission proposes new fees for Commercial Mobile Radio Service ("CMRS") providers for Fiscal Year 1996. Because Nextel's interconnected Specialized Mobile Radio ("SMR") services, including its wide-area digital SMR networks, were not regulated as CMRS on December 31, 1995 -- the date on which the Commission assesses the amount of the 1996 CMRS fee -- Nextel submits that it has no CMRS service on which to assess the new CMRS fees in the Fiscal Year 1996.

II. BACKGROUND

As a Private Mobile Radio Service ("PMRS") provider, Nextel currently pays regulatory fees at the time it files an application

^{1/} Notice Of Proposed Rule Making, FCC 96-153, released April 9, 1996.

for a new station, a renewal, or a reinstatement. The fee, a one-time payment, is paid per license and is calculated according to the length of the license. There is currently no per unit charge imposed on any PMRS licensee.

Under the Commission's proposed rules, SMR providers that continue to be regulated as PMRS, i.e., SMR providers that do not offer interconnected services, will continue to pay per year/per license charges as described above. Under the proposed 1996 fees, they would pay \$6 per year/per license for exclusive use channels and \$3 per year/per license for shared channels. CMRS carriers, on the other hand, would be subject to a new \$.15 per unit charge. However, Personal Communications Services ("PCS"), although a CMRS service, would not be subject to the \$.15 per unit charge during Fiscal Year 1996 because the Commission proposes to exempt PCS as a new entrant service.^{2/}

III. DISCUSSION

A. Nextel Is Not Providing CMRS Services That Would Be Subject To The New CMRS Fee

In the NPRM, the Commission establishes December 31, 1995 as the date on which it will base the per unit fee for CMRS carriers. The number of mobile units that a CMRS carrier has in service on that date will determine the total CMRS fee to be paid the Commission for Fiscal Year 1996.^{3/} Because Nextel was regulated as a PMRS provider on December 31, 1995 -- and will continue to be

^{2/} NPRM at para. 19, fn. 2.

^{3/} NPRM at para. 59.

so regulated until August 10, 1996 -- Nextel had no CMRS mobile units in service on December 31, 1995. Therefore, with no CMRS mobile units in service on the determination date, the new CMRS fee is not applicable to Nextel's SMR services for Fiscal Year 1996.

B. Regulatory Parity And The Creation Of A Competitive CMRS Marketplace Demand That The Commission Apply A New Entrant Exemption To All New Entrant CMRS Providers

Should the Commission nonetheless determine that Nextel is subject to the CMRS fee despite the fact that it was not providing CMRS services on December 31, 1995, the Commission should exempt Nextel from the CMRS fee for the same reason it has tentatively concluded to exempt PCS providers: they are new entrant CMRS providers. In the NPRM, the Commission properly determined that new entrant CMRS providers should be exempt from the newly-created CMRS regulatory fees, but it improperly limited the exemption to PCS providers. Fairness and implementation of regulatory parity as required by the Omnibus Budget Reconciliation Act of 1993,^{4/} require that the exemption extend to all new entrant CMRS providers, including Nextel. Limiting the exemption to PCS providers would create a regulatory competitive advantage for PCS services. This would unfairly disadvantage Nextel and other similarly situated new entrants vis-a-vis PCS providers as they attempt to compete with the established cellular carriers in the commercial wireless services marketplace.

^{4/} Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 312 (1993).

Nextel, like PCS licensees, is in the process of constructing and implementing wide-area digital telecommunications networks. Compared to cellular carriers, both have very few customers and mobile units in service. Moreover, Nextel -- unlike the PCS licensees -- is still awaiting the first wide-area SMR license auction while the PCS auctions continue to proceed. Once those licenses are issued, SMR providers such as Nextel finally will receive the regulatory licensing parity necessary to compete more fully with cellular and PCS.

Given the competitive status of all new entrant CMRS providers, the Commission should not arbitrarily choose one over the others for special exemption from regulatory fees. Therefore, the Commission must extend the exemption to other new entrants, including Nextel.

C. If The New CMRS Fee Is Applied To Nextel, It Must Be Prorated To Account For The Period Before August 10, 1996 When Nextel Was Regulated As A PMRS Provider

Notwithstanding the above, if the Commission incorrectly concludes that Nextel is subject to the CMRS fee in Fiscal Year 1996, it can only be applied on a *pro rata* basis. Fiscal Year 1996 runs from October 1, 1995 to September 30, 1996. Therefore, Nextel will only be regulated as a CMRS provider for approximately seven weeks during Fiscal Year 1996 and should not be subject to paying the fee for the entire year. Once the fee is calculated, based on the December 31, 1995 number of units in service, the Commission must prorate the total amount to reflect the limited time during which Nextel was regulated as a CMRS carrier. Since Nextel will

only be a CMRS carrier for seven weeks of the entire year, Nextel should be responsible for only 13.46% of the total fee, i.e., seven weeks divided by 52 weeks. Moreover, to the extent Nextel has paid regulatory fees as a PMRS carrier during Fiscal Year 1996, those payments should be credited toward the amount due as a CMRS carrier under the Commission's proposed rules, and if appropriate, a refund should be issued to Nextel.^{5/}

IV. CONCLUSION

As a PMRS provider on December 31, 1995, Nextel had no mobile units in service subject to the \$.15 per mobile unit fee applicable to CMRS services. Therefore, Nextel is not subject to the CMRS fee for Fiscal Year 1996. However, should the Commission conclude that Nextel is subject to the CMRS fee, Nextel is entitled to the regulatory fee exemption being provided PCS. Both Nextel and PCS providers are new entrant CMRS providers and therefore entitled to the same fee exemption. Excluding only PCS providers would be an

^{5/} Before and after August 10, 1996, Nextel will offer both interconnected and non-interconnected services to its customers. Although the interconnected services will be regulated as CMRS after August 10, 1996, Nextel's non-interconnected services will not meet the definition of a CMRS service and should continue to be regulated as PMRS. Therefore, as a PMRS service, those mobile units providing non-interconnected SMR services to the public should not be counted for purposes of the \$.15 per unit fee.

arbitrary distinction among new entrant CMRS carriers and, in turn, would provide PCS an unfair competitive advantage.

Respectfully submitted,

By 

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Date: April 29, 1996

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 29th day of April 1996, I caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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